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May 6, 2020

Via E-Mail<sup>1</sup>

The Hon. Sarah Netburn  
United States Magistrate Judge  
Thurgood Marshall Courthouse  
40 Foley Square, Room 430  
New York, NY 10007

Re: *Rich v. Fox News Network LLC, et al.*, No. 18-cv-2223

Dear Judge Netburn:

Plaintiffs Joel and Mary Rich write to bring to the Court's attention additional evidence confirming this Court's jurisdiction over Defendant Ed Butowsky.<sup>2</sup> Butowsky's motion to dismiss fails for the reasons set forth in Plaintiffs' Opposition (Dkt. 56), and Plaintiffs' letter of February 13, 2020 (Dkt. 126). This new evidence further demonstrates that this Court has jurisdiction over Butowsky.

Butowsky's motion is premised on the assertion that there is not "a single allegation asserting that Butowsky committed any acts within New York." Butowsky Motion at 8 (Dkt. 53). Defendant Fox News Network LLC ("Fox"), who Plaintiffs allege

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<sup>1</sup> Plaintiffs file this letter by email pursuant to this Court's Individual Rule I.A because Fox designated the documents attached as exhibits and quoted in this letter "Highly Confidential" under the Amended Protective Order (Dkt. 143). Plaintiffs do not believe there is any basis to designate these documents "Confidential," much less "Highly Confidential" and will file this letter on the public docket if (a) Fox consents; or (b) the Court so orders.

<sup>2</sup> The Court is "entitled to look outside the pleadings" in deciding personal jurisdiction. Butowsky Motion (Dkt. 53) at 6 (citing *Faulkner v. Beer*, 463 F.3d 130, 134 (2d Cir. 2006)).

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conspired with Butowsky,<sup>3</sup> recently produced documents that show Butowsky *did* commit acts in New York related to this suit – acts “‘creat[ing] a substantial connection with the forum state.’” *Id.* at 7 (quoting *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014)).

**FoxNews0001862 (Exhibit 1):** On May 22, 2017, 6 days after Fox published the “Zimmerman/Fox Article” reporting falsely that Fox had evidence that Seth Rich gave the DNC emails to WikiLeaks, Am. Compl. ¶ 70 (Dkt. 99), Malia Zimmerman emailed her Fox editor, Greg Wilson with an “update”:

Ed Butowsky is *coming to New York* to show you all the text messages with Brad Bauman and *the Rich family and Rod Wheeler*. He said the picture is not complete without showing that to you and whoever else should see it.

The following day, May 23, 2017, Fox retracted the Zimmerman/Fox Article.

**FoxNews0001076 (Exhibit 2):** On June 27, 2017, Butowsky again came to Fox’s New York office and emailed Fox’s then-Managing Director Refet Kaplan, who was involved in the decision to retract the Zimmerman/Fox Article and the post-retraction review, according to Fox’s Initial Disclosures and interrogatory responses. Butowsky wrote to Kaplan:

I have some information that I know will be very helpful. *I am on the 3<sup>rd</sup> floor in cafeteria near fitness center. I thought it best not to appear on your floor.* If you have a moment or any other appropriate person, please visit for 2 mins. I truly believe this will be helpful and it is very time sensitive.

The day before sending this email, Butowsky tweeted: “Fox News story was pulled b/c Rod Wheeler said [he] didn’t say a quote ... How much did DNC pay him?” Am. Compl. ¶ 112.

The Riches allege that, as part of the tort of intentional infliction of emotional distress, Fox and Butowsky continued to propagate the sham story throughout 2017 even after the retraction. *Id.* ¶¶ 111–17. Together with the evidence in the Rich’s February 13, 2020 letter (Dkt. 126), these emails show that Butowsky came to New

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<sup>3</sup> These documents also demonstrate the relationship and concerted action between Butowsky and Fox that refute Fox’s arguments for dismissal of Plaintiffs’ conspiracy and aiding abetting claims, providing further support for Plaintiffs’ arguments in opposition to that recent motion. *See* Dkt. 116.

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York to promote and bolster the Zimmerman/Fox Articles no fewer than *five times in the span of five months*.<sup>4</sup>

Plaintiffs respectfully request that the Court deny Butowsky's motion to dismiss.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Barron', with a long horizontal flourish extending to the right.

Elisha Barron

*Counsel for Joel & Mary Rich*

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<sup>4</sup> Butowsky (1) transacted business; (2) committed elements of a tortious act (intentional infliction of emotional distress); and (3) used real property (the Fox headquarters) to commit the tort – all of which establish jurisdiction under N.Y.C.P.L.R. § 302(a). *See* Butowsky Motion at 7.

## EXHIBIT 1

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**From:** Zimmerman, Malia McLaughlin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B3A6E05A54B040269C5CD84E981E164D-ZIMMERMAN,]  
**Sent:** 5/22/2017 3:03:02 PM  
**To:** Wilson, Greg [Greg.wilson@FOXNEWS.COM]  
**Subject:** update

Ed Butowsky is coming to New York to show you all the text messages with Brad Bauman and the Rich family and Rod Wheeler.

He said the picture is not complete without showing that to you and whoever else should see it.

He's on a train from DC and will arrive at Fox just before 4pm.

I am getting the information that Refet wanted regarding correspondence with Rod.

Malia Zimmerman  
Investigative Reporter,  
[FoxNews.com](http://FoxNews.com)

2044 Armacost Avenue  
Los Angeles, CA 90025

O: 310-571-2042  
M: 808-306-3161  
E: [Malia.Zimmerman@foxnews.com](mailto:Malia.Zimmerman@foxnews.com)



## EXHIBIT 2

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**From:** ebutowsky@gmail.com [ebutowsky@gmail.com]  
**Sent:** 6/27/2017 1:47:06 PM  
**To:** Kaplan, Refet [Refet.Kaplan@FOXNEWS.COM]  
**CC:** Wilson, Greg [Greg.wilson@FOXNEWS.COM]  
**Subject:** From ed butowsky

Refet,I have some information that I know will be very helpful.  
I am on the 3rd floor in cafeteria near fitness center.  
I thought it best not to appear on your floor.  
If you have a moment or any other appropriate person, please visit for 2 mins.  
I truly believe this will be helpful and it is very time sensitive